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ABSTRACT

This manual is designed as a practical handbook for air pollution control officials. A variety of situations and tasks encountered in field operations are described and the appropriate action which should be taken is explained Topics include source detection, source inspection, recording and reporting inspections, maintaining a recording system, drawing flow diagrams, and a guide for establishing opacity violations. The section on format for enforcement presents in detail items related to the enforcement time schedule; citations; conference, conciliation, persuasion; compliance; written orders; and variance requests. Sample forms and formats are given. Finally, legal action is considered with notes about prosecuting violators and preparations for hearing board and court cases as well as how to be a good witness. (BL)

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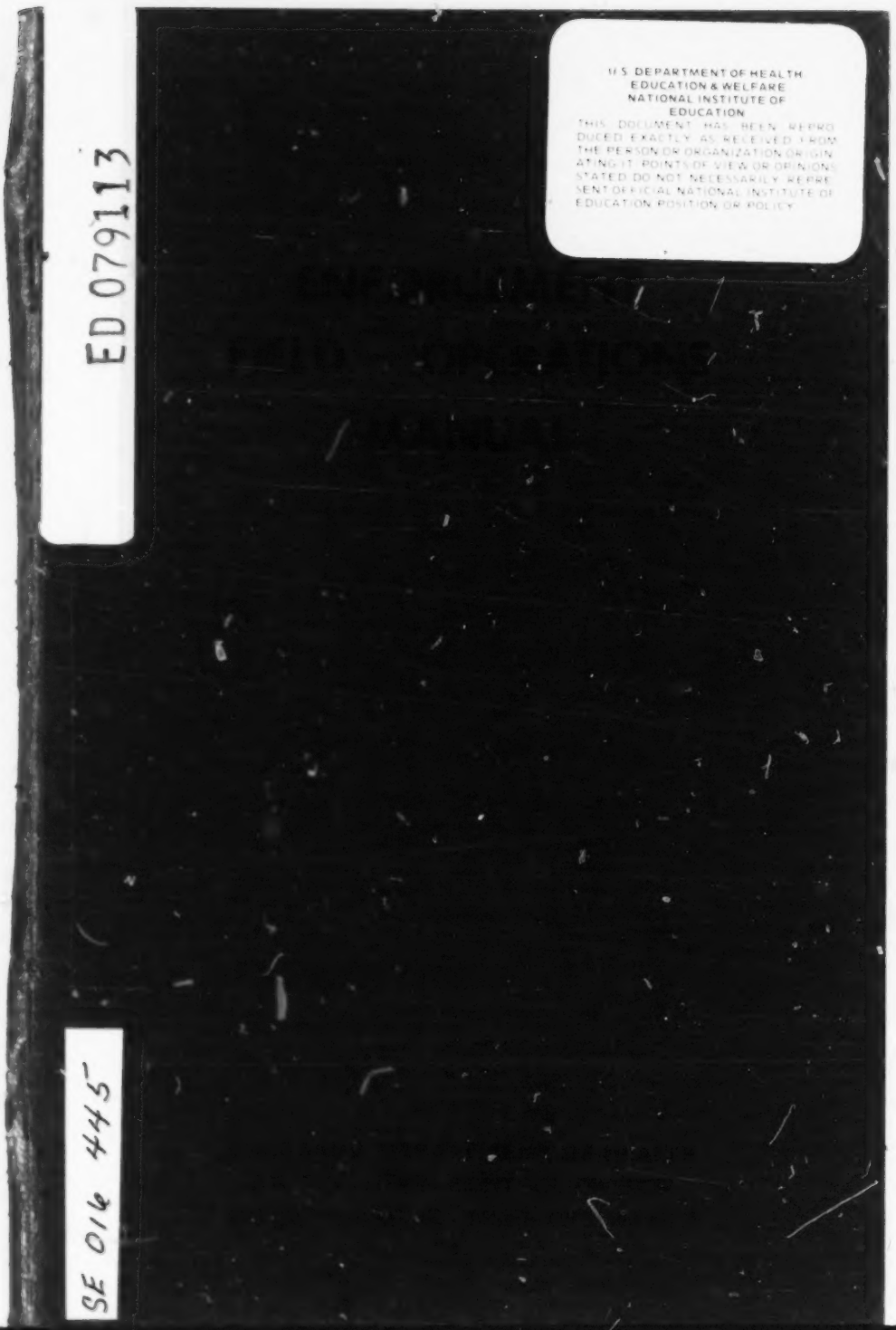
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COLORADO DEPARTMENT OF HEALTH
AIR POLLUTION CONTROL DIVISION
ENFORCEMENT SECTION

SOURCE DETECTION

The first task of the field control official is to locate and identify the sources of air pollution and the problems which require solution. The sources of air pollution are detected through surveillance, systematic equipment inspection, registration, and investigation of citizens' complaints. Each source of air pollution must be observed by a responsible member of the control agency, and the stack emissions, the equipment and operational procedures employed must be noted.

The objective is to accomplish the observation and inspection of each source of air pollution in the surveillance area in the shortest possible time without compromising quality or justice.

Saturation coverage is intended to obtain a minimum pollution potential by securing the greatest degree of mass-compliance possible with the existing statutory authority. Saturation coverage, therefore, provides for (1) uniform and complete inspection of all potential sources of air pollution, (2) continuous status determination of compliance as well as non-compliance, and (3) a degree of surveillance and inspection capable of detecting the critical number of violations which may occur at any time.

Selective coverage, on the other hand, is concerned only with the investigation and solution of certain key and isolated problems.

Obviously, the more field personnel employed by the control agency, the greater the coverage that can be employed by budgetary considerations, and optimum, rather than maximum, coverage is obtained. Field deployment, therefore, must be based on two considerations:

1. Surveillance Factor. The period of time and the frequency each source of pollution istto be observed.

2. Inspection Factor. The frequency with which each piece of equipment is inventoried for source registration and inspected thoroughly to determine compliance with the air pollution control law.

Surveillance consists of observing both specific industrial plants and whole source areas at a time within the radius of vision of an inspector.

As the inspector becomes familiar with his sector, his activity tends to concentrate in the areas of highest source density.

The inspection factor is predicated on the changes which may take place in industrial equipment and operations. Since equipment and operation do not change rapidly, a common practice is to provide for at least one inspection of each source of air pollution annually. This is based on an equipment and business turnover that tends to be realized at the end of each fiscal cycle or year.

Sources of air pollution are not only detected through surveillance and source inspection, but also by citizen complaints and aerial inspection when possible.

Some of the major sources of pollution are categorized as follows:

Aircraft
Agricultural Processing
Aluminum Foundry
Ammonium Sulfate
Asphalt Batch Plants
Asphalt Blowing
Asphalt Pipe Coating
Asphalt Impregnating
Automobiles
Brass Foundries
Cement Batch Plants

Cement Bulk Transfer
Cement Lightweight Aggregate plants
Chemical plants
Clay and Brick Processing
Diesel Trucks and Railroads
Domestic Incinerator
Feed Mixing
Ferrous Arc Melting
Ferrous Cupolas
Ferrous Inductive Melting
Filling Auto Tanks
Filling Gasoline Tank Trucks
Filling Service Station Tanks
Gasoline Storage Tanks and Refineries
Gasoline Storage Tanks other than Refineries
Grain Milling
Gravel Mining
Industrial and Commercial Residential Oil Combustion
Industrial Natural Gas Combustion
Multiple Chamber Incinerator
Munitions
Perchlorethylene
Petroleum Solvents
Pole and Wood Impregnating
Power Generation
Refineries
Residential and Commercial L.P.Gas
Residential and Commercial Natural Gas
Spray Painting Enamel
Spray Painting Lacquer
Spray Painting Polyester Resin
Spray Painting Primer
Spray Painting Solvents
Spray Painting Varnish
Stoddard Solvent
Terminal Grain Elevator

These represent major potential polluters whose compliance is assured through field control operations. Other air pollution potentials resulting from such sources as organic solvents may be subject to control pending completion of research projects and passage of control regulations.

In addition to the major sources of air pollution, other industries requiring less attention as whole must still be inspected. These include such industries as metal fabricating plants, woodworking plants, and other non-ferrous industries other than aluminum or brass, bulk loading, and grain and feed mills. Although such plants may not present large contributions to the total air pollution problem, they may cause local nuisances.

In order to overcome the problems presented by this diversity and complexity of the sources and the magnitude of the land area, it is necessary to make inspection assignments according to the following:

Local Agency Inspection
Scheduled Inspection
Citizens' Reports
Aerial Inspection When Possible

SOURCE INSPECTION

The next step in field control operations is the inspection of equipment in the industrial and commercial plants located in the inspection areas. The smallest and most important unit of inspection is the equipment unit--that unit of equipment which would legally constitute a single source of emission. Most often the equipment unit is a single piece of equipment; a boiler, a furnace, an incinerator, constituting the equipment unit or the single source of emission.

Two types of inspections can be made of equipment units: (1) violation inspections, and (2) inventory inspections. We may also consider, in relation to these inspections, follow-up and periodic reinspections, and complaint and miscellaneous inspections. See Section Three--How to Build a Case to Determine How Violations are Handled.

RECORDING AND REPORTING INSPECTIONS

The Evaluation and Field Worksheet is a record of an event occurring at a specific time in relation to an actual or potential air pollution problem. Although it is not evidence itself, it constitutes the relevant facts upon which an event can be reconstructed into evidence in a court of law. The inspector's report also provides data from which enforcement operations and inspection technique can be improved.

The inspector prepares a report covering his inspection made of equipment units at each location. As a means of definitely fixing responsibility for the ownership and operation of equipment units, all reports are titled and filed according to the name of the company or individual, and the address of the location inspected.

Field reports fall into three general types: (1) Investigative, (2) descriptive and statistical, and (3) administrative or work reports.

In an investigative report (following an observation) the inspector relates the facts developed from a physical inspection of equipment units involved in a specific or potential air pollution problem. The object of the report is to determine whether the equipment violates a standard, is capable of violating the standard or complies with the standard.

In determining accuracy, reports must be systematically and carefully checked. Especially important are the specific circumstances, the names and addresses of responsible parties involved, existing meteorology, and opacity values and time intervals of violations, as well as a record of all persons involved. In permit cases, an accurate and specific description of status and such facts as degree of alteration or modification, date of change of ownership, relocation of equipment, exemptions, must be accurately ascertained and described.

MAINTAINING RECORD SYSTEMS

In order that maximum use can be made of all reports generated from field activity, a functional record-keeping system is required. Record keeping in enforcement is intended to provide information which is actively and continuously employed in the conduct of the field control operations program. There are three basic uses required of such record systems.

1. Case Histories -- the record system provides case histories of prior compliance or violation and other factual information which could be submitted as evidence in a court of law, such as:

   Administrative Hearings
   Source site visits
   Agreement reached
   Schedules proposed and how followed
   Permit status
   Products manufactured
   Frequency of violation
   Causes of Pollution Problems
   Pollution potentials
   Process Flows
   Equipment maintenance and operational practices.

2. Monitor Operations -- the record system should provide a record of field and administrative practices in order that all phases of the inspection and enforcement program may be monitored. Record-keeping discloses the judgments and decisions made in each operational step and at each level of responsibility in completing an enforcement action.

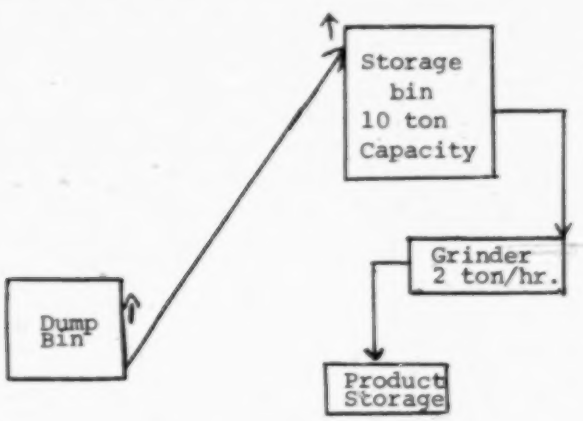
3. Statistical Analyses -- the record system should provide valid statistical summarizations and analyses of the results of the program for evaluating progress made, pollution potentials, and in preparing budgets and determining personnel needs.

4. A tickler file or its equivalent shall be used to ensure proper follow-up on all activities with time limitations.

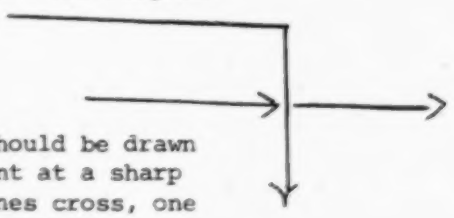
DRAWING FLOW DIAGRAMS

There will be times when a better understanding of a process, factory or business will be needed. This will be in addition to information previously collected. For this purpose the air pollution control representative will need to make a flow diagram of the process.

A simple line and box diagram will be most satisfactory. An arrow pointing upward should be used to indicate discharge to the atmosphere. Indicate volumes, temperatures and emissions on the diagram if information is available, or can be estimated.



The diagram should contain all notations with arrows pointing to appropriate locations to show clearly what the person making the flow diagram was thinking when he made the diagram.



The lines should be drawn straight and bent at a sharp angle. When lines cross, one line should be broken.

The lines should be labeled and vectored to show direction and content. It is not necessary to use symbols, but points of particular interest to air pollution work should be labeled if they appear pertinent.

The person drawing the diagram shall write a short discussion of the process for further clarification if necessary. It should be pointed out that notes, on the diagram will be more easily followed and understood than a written description. References to location on the diagram should be keyed to that part of the diagram with a circled number and arrow.

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AIR POLLUTION CONTROL DIVISION
4210 EAST 11TH AVENUE
DENVER, COLORADO 80220
388-6111

GUIDE FOR ESTABLISHING OPACITY VIOLATIONS

1. Take readings of plume at an angle approximately 90° to the direction of the wind.

2. Readings may be made from any distance necessary to obtain a clear view of the stack and a clear background.

3. The reading should be made during daylight hours and the light source should be at the observer's back.

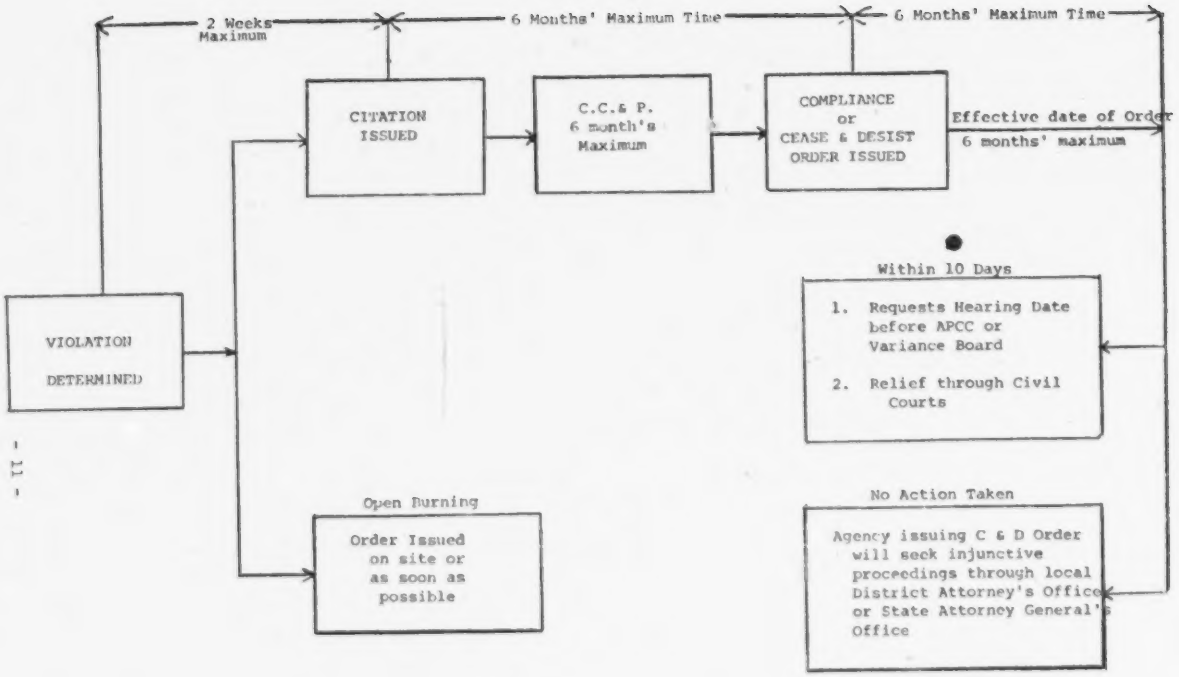
4. If readings must be taken during hours of darkness, light source should be behind the plume.

5. As a defense against challenge, it is recommended that the total time used to establish an opacity violation be two to three minutes in excess of that required by regulation.

6. An observer must have been certified by the Division as successfully having completed the State operated smoke school before citing violations.

7. Record on work sheet.

FORMAT FOR ENFORCEMENT


2 Weeks Maximum
6 Months' Maximum Time
6 Months' Maximum Time
CITATION ISSUED
C.C.& P. 6 month's Maximum
COMPLIANCE or CEASE & DESIST ORDER ISSUED
Effective date of Order
6 months' maximum
Within 10 Days
1. Requests Hearing Date before APCC or Variance Board
2. Relief through Civil Courts
VIOLATION DETERMINED
Open Burning
Order Issued on site or as soon as possible
No Action Taken
Agency issuing C & D Order will seek injunctive proceedings through local District Attorney's Office or State Attorney General's Office

ENFORCEMENT TIME SCHEDULES

FORMAT FOR ENFORCEMENT

CITATIONS

Whenever a violation of the Colorado Air Pollution Control Act has been observed by an enforcement official, an investigation to confirm that violation will be conducted at the earliest possible date. If opacity readings are taken or other tests conducted, the operator or plant personnel will be verbally informed as to what the investigation disclosed and, if a violation exists, the nature of the violation. A certified follow-up letter of citation shall be mailed as soon as possible (within 14 days) to the owner and/or operator in the case of all violations.

CITATION FORMAT

The following criteria are set forth as aids in preparing a letter of citation according to State statute:

1. Send citation by certified mail (return receipt required).

2. Include the kind and nature of the violation and quote the section of the Act violated.

3. When noting opacity violation indicate:
   a) % opacity
   b) the exact time and date of violation
   c) observed duration of violation
   d) that management or person(s) responsible were verbally notified or an attempt was made so to notify

4. Request that violator: (a) submit a plan of compliance to the enforcement agency within a definite time; (b) acknowledge receipt of citation within 10 days of receipt of letter.

5. A copy of the present Colorado Air Pollution Control Act should be sent to the violator at the time of the citation notice (if indicated).

Copies of this letter in duplicate will be transmitted to the Division of Administration for file with the Commission and the Division. Within thirty days thereafter a report will be made to the Division setting forth what steps have been taken to abate the violation and the progress made in that regard. File a reminder utilizing a tickler file or its equivalent.

CONFERENCE, CONCILIATION AND PERSUASION

Conference, conciliation and persuasion will be carried out in as short a time period as practicable, in an effort to control and/or abate the emission. During this period a concerted effort will be made by the enforcement personnel to furnish all available technical information and expertise to the alleged violator in an effort to reach an agreement on what controls will be applied or changes made to bring this source into compliance. Agreement shall be reached between the enforcement agency and the alleged violator within a reasonable time not to exceed a maximum of six (6) months from the date of citation. Since the law requires that all violators be issued a cease and desist order no later than six months after a violation citation is issued, the local agency will have either issued such order or recommended that the Division do so before the end of that time. Duplicate copies of all cease and desist orders will be transmitted to the Division upon issuance. (Violations of local or city or county ordinances that are more restrictive than the State law in any regard which do not also violate the present law, or regulations hereafter promulgated by the Commission, need not be reported.)

Whenever the Division has reason to believe that a violation exists, it will inform the local agency having jurisdiction and request that they investigate the matter further. Within thirty days thereafter the local agency shall report to the Division what steps have been taken to abate the violation and the progress made in that regard. If these steps are deemed inadequate, the Division will proceed independently to take action against the violator and report that action taken to the local agency within 30 days thereafter.

COMPLIANCE

If compliance is reached within the specified time a compliance form will be completed and filed with the Division. In the event that compliance is not reached within six (6) months from the date of citation, the local agency will have either issued a written order or made a recommendation that the Division do so.

ORDER

The written order will be in the form of a cease and desist order which will set forth time limitations for its effect (and will not exceed six (6) months), according to State statute. After receipt of a written order the alleged violator has 10 days in which to seek reprieve by asking (in writing) for a hearing before the Variance Board or by use of Civil Court procedures. Any cease and desist order so drafted and sent shall be signed by the Director of the local or State enforcement agency or approved by signature of said official.

VARIANCE REQUEST

To seek a variance, a letter from the alleged violator shall be directed to

Chairman, Colorado Air Pollution Control Commission
c/o Air Pollution Control Division
4210 East 11th Avenue
Colorado Department of Health
Denver, Colorado 80220

asking to be heard before the Variance Board for a variance from that portion of statute that he has been cited under. The Variance Board then has fifteen (15) days in which to answer with a date for the hearing.

Whenever the Division or the local agency receives a request for a variance or a hearing before the State or local variance board, the other agency will be informed in writing and advised as to what action results therefrom.

E X A M P L E

F O R M S A N D F O R M A T S

COLORADO DEPARTMENT OF HEALTH
AIR POLLUTION CONTROL DIVISION
4210 EAST 11th AVENUE
DENVER, COLORADO 80220
388-6111 -

☐ Observation
☐ Response to Complaint
☐ Investigation
☐ Routine Inspection
Date _____
Time _____

EVALUATION AND FIELD WORKSHEET

Emission Involved _____

_____ Duration of Observation _____

Name _____ Responsible Person _____

Address _____ Telephone Number _____

Alleged Violation	For Opacity or Odor Observation
_____	Observation begun _____ Ended _____ Observation point _____ Approx. Stack Dist. _____ Stack Hgt. _____ Approx. Wind Speed _____ Direction _____ Sky Conditions _____ Temperature _____

Remarks - Flow diagrams - Additional personnel involved

Signature _____

APCE
2-1-71

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5. A copy of the present Colorado Air Pollution Control Act should be sent to the violator at the time of the citation notice.

COMPLIANCE FORMAT

In the event that a person or industry, that has been cited, attains compliance with air pollution laws, regulations or ordinances, a letter of compliance shall be written to the person or persons responsible for the source operation, setting forth the following:

1. The date that the field inspector recorded as date of confirmed compliance.

2. The regulation that has been complied with.

3. That the air pollution standards are performance standards and must be met on a continual basis.

4. In the event of upset conditions the air pollution authority with jurisdiction must be properly notified or the source will be considered in violation.

. Copies of all such letters will be sent to the State Enforcement Section.

. Surveillance of all known sources exceeding regulations will be continued whether or not under variance or litigation.

. If the source is in litigation consult with legal counsel (through the State Enforcement Section) before issuing a letter of compliance.

LEGAL ACTION

PROSECUTING VIOLATORS AND PREPARATION FOR HEARING BOARD AND COURT CASES

Although court action may appear to be the concluding phase in the handling of an air pollution violation, it should be actually viewed as a link in a kind of circular process in which the decisions handed down by the courts tend to influence and regulate the field control operations program. This is done in two ways:

1. Each step in the field control operations program is conducted so as to be capable of furnishing the court or the Variance Board with the facts needed for a prima facie case, and any other facts from past records which are pertinent to a final disposition. All enforcement actions should be taken with the idea that the case will eventually wind up in a court case and trial. It is therefore, most important to build an accurate and complete file on each and every violator.

2. The principles involved in court decisions, particularly at the appellate level, directly affect administrative practices, policies and inspection techniques.

The Court and Hearing Board's influence on the agency may be found not only in the actual disposition of a case, but both in the anticipation of a decision prior to the actual filing of the case, and the interpretation of the final decision. Since the agency is a part of government, it is ethically bound to all legal principles which the courts find valid, and it must avoid all malpractice or circumvention of principle. This imposes obligations on the enforcement operation.

First, it is necessary to realize that courts are concerned with justice, not in justifying the actions of the control agency. The control agency is not

infallible. It is the court's purpose to determine whether or not a defendant is guilty or innocent of allegations made. Therefore, the handling of court cases, as well as all legal matters, cannot be irresponsible or incompetent. To be so is to cause the loss of cases and, hence, control powers, by default.

Second, to operate satisfactorily in this regard the agency will require competent and experienced counsel by a civil attorney.

HOW TO BE A GOOD WITNESS

HOW TO BE A GOOD WITNESS

You, as a witness in an air pollution case, have a very important job to do. Important not only to the air pollution control program and to yourself, but most important to your community. In order for a trial judge or a jury to make a correct and wise decision, it must have all of the evidence put before it in an accurate and truthful manner.

You already know that you take an oath in court to tell nothing but the truth. But there are two ways to tell the truth. One is a halting, stumbling, hesitant manner, which makes the jury doubt that you are telling all of the facts in a truthful way. The other is in a confident, straightforward manner,which makes the jury have more faith in what you are saying. You help yourself, the health department you are testifying for, and the judge and jury by giving your testimony in this last way.

To assist you in this, we have prepared a list of time-proven hints and aids which, if followed, will make your testimony much more effective.

1. If you are a witness in a court case involving your work as a health official and you aided in the investigations, read your notes and the reports again before the trial. Close your eyes and try to picture the scene (eg: establishment) in question, the objects there and the distances.

2. Before you testify, visit the court, and listen to other witnesses testify in your case. This will make you familiar with a court, and help you to understand some of the things you will come up against when you give your testimony.

Your Impression on the Court

3. Wear clean clothes in court. Dress conservatively.

4. Don't chew gum while testifying or taking the oath.

5. Stand upright when taking the oath. Pay attention and say "I do" clearly.

6. Don't memorize what you are going to say.

7. Be serious at all times. Avoid laughing and talking about the case in the halls, restrooms or any place in the courthouse.

8. While testifying, talk to the members of the jury. Look at them most of the time, speak to them frankly and openly as you would to any friend or neighbor. Do not cover your mouth with your hand. Speak clearly and loudly enough so that the farthest juror can hear you easily.

9. Listen carefully to the questions asked of you. No matter how nice the other attorney may seem on cross-examination, he may be trying to hurt you as a witness. Understand the question. Have it repeated if necessary; then give a thoughtful, considered answer. Do not give a snap answer without thinking. You can't be rushed into answering, although, of course, it would look bad to take so much time on each question that the jury would think you were making up an answer.

Factual Answers

10. Explain your answer if necessary. This is better than a simple "yes" or "no". Give an answer in your own words. If a question can't be truthfully answered with a "yes" or "no", you have a right to explain the answer.

11. Answer directly and simply only the question asked you, and then stop. Do not volunteer information not actually asked for.

12. If your answer was wrong, correct it immediately.

13. If your answer was not clear, clarify it immediately.

14. The court and jury only want facts: not hearsay, nor your conclusions, nor opinions. You usually can't testify about what someone else told you.

15. Don't say, "That's all of the conversation," or "nothing else happened." Say, "That's all I recall," or "That's all I remember happening." It may be that after more thought or another question you will remember something important.

16. Be polite always, even to the other attorney.

17. Don't be a smart aleck or cocky witness! This will lose you the respect of the judge and jury.

18. You are sworn to tell the truth. Tell it. Every material truth should be readily admitted, even if not to the advantage of the party for whom you testify. Do not stop to figure out whether your answer will help or hurt your side. Just answer the questions to the best of your memory.

19. Don't try to think back to what was said in a statement you made or a deposition. When a question is asked, visualize what you actually saw and answer from that. The jury thinks a witness is lying if his story seems too "pat" or memorized, or if he answers several questions in the same language.

20. Do not exaggerate.

21. Stop instantly when the judge interrupts you, or when the other attorney objects to what you say. Do not try to sneak your answer in.

22. Give positive, definite answers when at all possible. Avoid saying "I think," "I believe," "in my opinion." If you do know, say so; don't make up an answer. You can be positive about the important things which you naturally would remember. If asked about little details which a person naturally would not remember, it is best to just say that you don't remember. But don't let the cross-examiner get you in the trap of answering question after question with "I don't know."

Avoid Mannerisms

23. Don't act nervous. Avoid mannerisms which will make the jury think you are scared, or not telling the truth or all that you know.

24. Above all, this is most important, do not lose your temper. Testifying for a length of time is tiring. It causes fatigue. You will recognize fatigue by certain symptoms: (a) tiredness (b) crossness (c) nervousness (d) anger (e) careless answers (f) willingness to say anything or answer any question in order to leave the witness stand. When you feel these symptoms, recognize them and strive to overcome fatigue. Remember that some attorneys on cross-examination will try to wear you out so you will lose your temper and say things that are not correct, or that will hurt you or your testimony. Do not let this happen.

Self Reliance

25. If you do not want to answer a question, do not ask the judge whether you must answer it. If it is an improper question, the attorney who called you to the stand will take it up with the judge for you. Don't ask the judge for advice.

26. Don't look at the attorney or at the judge for help in answering a question. You are on your own. If the question is improper, the attorney will object. If the judge then says to answer it, do so.

27. Do not "hedge" or argue with the other attorney.

28. Do not nod your head for a "yes" or "no" answer. Speak out clearly, the court reporter must hear the answer.

29. If the question is about distances or time and your answer is only an estimate, be sure that you say it is only an estimate. Before testifying, think about speeds, distances, and intervals of time.

30. When you leave the witness stand after testifying, wear a confident expression, not a downcast one.

Trick Questions

31. There are several questions which are known as "trick questions." That is, if you answer them the way the other attorney hopes you will, he can make your answer sound bad to the jury. Here are two of them:

(a) "Have you talked to anybody about this case?" If you say "no," the jury knows that isn't right because good lawyers always talk to the witnesses before they testify. If you say "yes," the lawyer may try to infer that you were told what to say. The best thing to do is to say very frankly that you have talked to whomever you have--District Attorney, Health Officer, your supervisors, etc.--and that you were just asked what the facts were. All we want you to do is simply tell the truth.

(b) "Are there other establishments within the community in violation of the specific section of the Air Pollution Act? The lawyer asking this question hopes your quick answer will be "yes" thereby inferring that you are discriminating against the defendant. Do not answer, wait for the prosecuting attorney to object to the question, since the question is asking for your opinion or legal conclusion (Rules of Evidence).

32. Go back, now, and reread these suggestions so you will have them firmly in your mind. We hope they won't confuse you. We hope they will help. These aren't to memorize. Ask your District Attorney about anything you don't understand. You will find there is really nothing at all to be scared about or nervous about in testifying. If you relax and remember you are just talking to some neighbors on the jury you will get along fine.